



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “*Act*”) to end the tenancy early pursuant to Section 56 of the *Act*.

The Landlord and Tenant were both present for the teleconference hearing and were affirmed to be truthful in their testimony. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Landlord stated that she did not receive any evidence from the Tenant and the Tenant confirmed that his evidence was not served to the Landlord. As such, the Tenant’s evidence is not accepted and will not be considered as it was not served in accordance with the *Act* and as required by the *Residential Tenancy Branch Rules of Procedure*. This decision will be based on the relevant evidence of the Landlord as well as the relevant verbal testimony of both parties.

Issue to be Decided

Is the Landlord entitled to an Order of Possession to end the tenancy early, pursuant to Section 56 of the *Act*?

Background and Evidence

The parties were in agreement that the tenancy started in December 2018 and that rent in the amount of \$1,500.00 is due on the first day of each month. The Landlord stated that \$300.00 was paid as a security deposit while the Tenant stated that it was \$600.00.

The Landlord provided testimony that the Tenant is constantly late paying rent and noted that she has served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

The Landlord also stated that she does not feel safe in her own home with the Tenant living on the residential property and that she needs the tenancy to end right away. The Landlord stated that she has been threatened by the Tenant, as has her family. She submitted a text message into evidence in which she stated the threats took place.

In the undated text message, the Tenant uses swear words and name calling. In the text message, the Tenant states that he will snap and has no problem messing "her and hers up".

The Tenant responded that he intends to move out of the rental unit by the end of September 2019 based on the 10 Day Notice to End Tenancy for Unpaid Rent. He stated that there was a text message right after the one submitted by the Landlord in which he clarifies that he intends to file a property complaint form and report the Landlord to the CRA. As such, he stated that the alleged threat was not a direct threat but was in relation to his intent to file a complaint against the Landlord and the property.

Analysis

The Landlord filed the application to end the tenancy early pursuant to Section 56 of the Act which allows an Order of Possession to be granted in circumstances as stated in Section 56(2)(a):

- (2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,
 - (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
 - (iii) put the landlord's property at significant risk;

- (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (v) caused extraordinary damage to the residential property

Section 56(2)(b) of the *Act* states that a landlord must also establish that it would be unreasonable or unfair to wait for a One Month Notice to End Tenancy for Cause to take effect.

While the Landlord testified as to late payment of rent and recent non-payment of rent, this is not a reason to end a tenancy under Section 56 of the *Act*.

The Landlord also testified as to threats to her safety and referenced a text message submitted into evidence. While I find the text message inappropriate, I do not find sufficient evidence before me to establish that the Tenant threatened the Landlord or her family such that this tenancy must end immediately. The Landlord did not testify as to any other incidents regarding threats to her safety from the Tenant.

I am also not satisfied that the Landlord submitted sufficient testimony or evidence to establish that it would be unreasonable or unfair for her to wait for the tenancy to end through a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act*.

An application pursuant to Section 56 of the *Act* is reserved for urgent matters and is not meant to bypass the process for ending a tenancy through service of a notice to end tenancy.

As such, based on the testimony and evidence before me, I do not find that the Landlord has met the high burden of proof for an application under Section 56 of the

Act. Therefore, I decline to issue an Order of Possession. The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply.

However, I caution the Tenant that he has been warned regarding the inappropriate text message. While the Landlord's application was not successful, should there be further issues the Landlord may find cause to end the tenancy in accordance with Section 47 of the *Act*.

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 05, 2019

Residential Tenancy Branch